No. 1997

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

A. L. HALEY,

Petitioner,

vs.

JOHN D. POPE,

Respondent.

In the Matter of A. L. HALEY, Bankrupt.

PETITION FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Southern District of California, Southern Division.

FILMER BROS. CO. PRINT, 330 JACKSON ST., S. F.

Rules of U.S. Circuit Court of Appeals

754

Under Section 43 of the Judicial

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

Names and Addresses of Attorneys.

R. L. HORTON, Esq., Rooms 210–11, Henne Building, Los Angeles, Calif.,
Attorney for Bankrupt.

SHANKLAND & CHANDLER, Esqrs., Room 411, American Bank Building, Los Angeles, Calif.,
Attorneys for John D. Pope, Objecting Creditor. **[2*]**

[Report of Special Master.]

In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 347.

In the Matter of A. L. HALEY,
Bankrupt.

REPORT OF SPECIAL MASTER ON PETITION OF BANKRUPT FOR DISCHARGE AND UPON THE SPECIFICATIONS OF OPPOSITION THERETO OF JOHN D. POPE, A CREDITOR.

To the Honorable OLIN WELLBORN, Judge of said Court:

I, Lynn Helm, Referee in Bankruptcy to whom said matter was referred as special master on the 25th day of January, 1910, upon the petition of the said bankrupt for a discharge, filed November 18, 1909, and the objections of John D. Pope to said dis-

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* Page-number appearing at foot of page of original certified Record.

charge of said bankrupt, filed December 29, 1909, to ascertain the facts and to report the same with my conclusions thereon, having been attended by counsel for said bankrupt, R. L. Horton, Esq., and by Messrs. Shankland & Chandler, attorneys for John D. Pope, the objecting creditor, and having heard the evidence produced before me and the argument of counsel, and being fully advised in the premises do report as follows:

Said matter came on to be heard before me immediately after the order of reference made herein, but was, by agreement of attorneys for said bankrupt, continued from time to time until the 2d day of November, 1911, and thereafter the testimony taken upon said hearing was to be written up and **[3]** was not furnished to me until this day, February 20th, 1911.

The stenographer's transcript of this testimony, together with the assignment of the judgment recovered in the Superior Court of the State of California, in and for the County of Los Angeles, in the case of C. E. Fish vs. A. L. Haley, for the sum of $1054.66, and costs, which was all the evidence offered before me on this hearing, I return herewith, together with the files and papers in this matter.

The opposition to said discharge is based upon the following grounds of opposition, namely: That said bankrupt made a false oath in relation to the proceedings in bankruptcy, in that during the examination of said bankrupt in the course of the bankruptcy proceedings before the referee in charge of said proceeding, and having jurisdiction thereof, the bank-

rupt, being first duly sworn, testifies that he was the owner of 1250 shares of the capital stock of the A. L. Haley Architect Company, a corporation, and that he had pledged said stock with M. B. Greenwood, as security for an indebtedness which he owed to the said M. B. Greenwood; and subsequently the said bankrupt, during another examination of said bankrupt before said referee, the said bankrupt being first duly sworn, in reference to said shares of stock in the said A. L. Haley Architect Company, did knowingly and fraudulently make oath and declare that the said stock was owned by the said M. B. Greenwood, and not by himself, and that he had given said stock to her prior to the institution of said bankruptcy proceedings; that said bankrupt had, with intent to conceal his financial condition, failed to keep books of account, or records from which such condition might be ascertained; and that said bankrupt has concealed, while a bankrupt, from his trustee, certain property belonging to his estate in bankruptcy, to wit: the said 1250 shares of the **[4]** capital stock of the A. L. Haley Architect Company which are not mentioned in his schedules filed in said bankruptcy proceedings.

These objections are made by John D. Pope, an objecting creditor of said bankrupt, and also are joined in by the Los Angeles Trust Company, the trustee herein.

There is some doubt whether a trustee in bankruptcy is a proper party to oppose a discharge, it being said that his duty under the act is to administer the estate and to attend merely to matters pertaining

thereto. But, it has been held in In re Levey, 13 A. B. R. 112, 133 Fed. 572, that the trustee may be competent, if the estate is still unsettled, which is the case here, but that the trustee must show how and why the trustee is a party in interest, which is not shown in these specifications.

At the inception of the hearing of this matter, and continuing throughout the hearing, and when the matter was submitted, the bankrupt opposed any consideration of the opposing creditor's objections on the ground that the opposing creditor had no interest in opposing the bankrupt's discharge, for the reason that the opposing creditor had not proved his claim, and could not prove his claim, because the year since the adjudication had expired, prior to the filing of any opposition to said bankrupt's discharge; and that by reason thereof the opposing creditor could not share as a claimant in any dividends of the bankrupt's estate, if any there were.

It was admitted that C. E. Fish recovered a judgment against the said bankrupt, A. L. Haley, in a certain action brought in the Superior Court of the State of California, in and for the County of Los Angeles, by C. E. Fish against the said A. L. Haley, for the sum of $1054.66, and that said judgment, in the name of C. E. Fish as a creditor, was scheduled as a claim by the bankrupt, in his schedules filed herein on the **[5]** 17th day of June, 1909, and subject to its relevancy, it was agreed that the assignment made by Charles E. Fish to the said objecting creditor, John D. Pope, on April 28, 1906, of all the right and interest of the said C. E. Fish in and to

said judgment, should be received in evidence.

Subdivision b of section 14 of the Bankruptcy Act provides: "That the judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard * * *."

It is said in Re Levey, *supra:* "By implication, parties in interest only may oppose the discharge of the bankrupt. There is no express provision declaring who may oppose."

In General Order No. 32, made by the Supreme Court, it is provided that a creditor opposing application of a bankrupt for a discharge shall enter his appearance in opposition thereto, and shall file a specification in writing of the grounds of his opposition to the discharge.

Collier on Bankruptcy, page 262 (10th ed.), says: "Specifications may be filed by any person having a pecuniary interest in resisting the discharge of the bankrupt, as one owning an unliquidated claim, even though such person has not proven a debt, or his debt is no longer provable." Citing, In re Conroy, 14 A. B. R. 249.

Brandenburg, in his work on Bankruptcy, says, section 347: "Parties in interest, which would include creditors scheduled by the bankrupt, without regard to whether or not they had proved their claims, may oppose a discharge."

It is pointed out In re Levey, *supra,* that there is a clear distinction in reference to the allowance of the [6] opposition to a discharge by parties in

interest between "parties in interest" and "creditors," as the latter are mentioned in other parts of the Act.

The fact that the bankrupt has scheduled the person opposing his discharge, or the assignor of such opposing creditor, as a creditor, will imply that he is a party in interest, and the right to object is not restricted to creditors who have proved up their claims. The bankrupt here scheduled the assignor of this opposing creditor as a creditor, and the opposing creditor, as such assignee, may well be assumed to have an interest in resisting the discharge of the bankrupt from the debt he has against him, though he regarded the amount that he would probably receive from the estate as not sufficient to file and prove up his claim.

In re Frice, 2 A. B. R. 674.

It was held in In re Jacob Nathanson, 19 A. B. R. 56, 155 Fed. 645, that a creditor who has not proved his claim, cannot share in any distribution, but if he has a claim dischargeable in bankruptcy, and which could have been proved in the pending proceedings, he may oppose the discharge. It seems also that a person who has an enforceable claim against the bankrupt, as, for instance, a judgment from which the bankrupt would be relieved by his discharge, is a party in interest to defeat the bankrupt's discharge, and thus make it possible for him to subsequently enforce his claim.

I, therefore, have not sustained the bankrupt's objection to the consideration of the specifications and objections of the opposing creditor, John D. Pope, to

the bankrupt's discharge.

For the sake of convenience, I shall first recite the evidence in reference to the first and third specifications of objection of said creditor, John D. Pope, in opposition to [7] said bankrupt's discharge. The bankrupt was duly adjudicated as such on the 17th of June, 1909, and the order of reference was duly made to the undersigned as one of the referees in bankruptcy of this court, to take such further proceedings thereunder as are required by the Acts of Congress relating to Bankruptcy.

As appears by the records and files of this court, a meeting of the creditors of said bankrupt was duly called and held on the 13th day of July, 1909, before said referee, and at that meeting, the Los Angeles Trust Company was duly appointed trustee of said bankrupt's estate, and said bankrupt was examined at that meeting by the attorneys for the trustee in reference to his property. At that time, he testified in reference to his stock in the A. L. Haley Architect Company. The A. L. Haley Architect Company was a corporation organized under the laws of the state of California on the 16th of March, 1906, and to that company was transferred all of the business and goodwill of A. L. Haley, the bankrupt herein, and he received therefrom 1250 shares of stock for the goodwill of the business, and had the stock issued to one, Allen D. Butt, and had one share issued to himself. The other stockholders in the company were L. M. Lucas and A. Reef, they and the bankrupt each holding one share of stock in the company to qualify them as directors. The directors of the company were A.

L. Haley, L. M. Lucas and A. Reef. The bankrupt A. L. Haley was the president, L. M. Lucas was the secretary, and A. Reef was employed in the office as chief draughtsman.

The bankrupt testified that he had paid Mr. Butt about five hundred dollars and secured an assignment of the stock from Allen D. Butt, and that he then assigned the stock which still remained in the name of Allen D. Butt to Mrs. M. B. Greenwood. He was asked how Mrs. Greenwood happened to hold [8] the stock, and he said that it was held by her as security for a loan she had made him. He was asked whether it was his expectation that the stock should be returned to him in the event that the loan was paid, and he said it was his expectation, that if he paid the amount loaned, the sum of $2,000.00, together with interest, and satisfied the obligation, that he would get the stock, and he also testified that if the money was paid to Mrs. Greenwood, he would be entitled to the stock, because it was his and she had it, but he did not know whether she would give it up or not.

At that time, he also testified that there had been no meetings of the stockholders of the A. L. Haley Architect Company; that he was authorized by resolution of the directors of the A. L. Haley Architect Company to transact all its business; that there had been no dividends paid on the stock; that he had drawn a salary of $250.00 a month as an employee of the company, and in addition to that he had overdrawn his account and taken from the company, under the resolution authorizing him to do its busi-

ness a sum of upwards of ten thousand dollars; and that he was indebted to the company in that amount, and that none of the stockholders had ever called upon him for an accounting or asked him for money to apply upon dividends; that all of the money that had been received by the company for doing business as *a* architect, of which he was the architect, was received and handled by him, and paid out and disbursed by him.

He testified that his reason for drawing the money in preference to other people drawing it was due to the fact that he practically owned all the stock and that it was equivalent to declaring a dividend, but instead of declaring a dividend he simply got money from the secretary of the company whenever he wanted it. **[9]**

At this meeting, the bankrupt was not represented by counsel. At a subsequent meeting, after Mrs. Greenwood had been privately examined, the bankrupt testified that he had borrowed money from Mrs. Greenwood and pledged the 1250 shares with her, as security for the loan, and that subsequently she had called upon him for payment of the loan due her, and that he was unable to pay her the loan, and that he then gave her the stock, and that he was not able to decide whether the stock was hers or not.

This stock is not scheduled or mentioned in the schedules in bankruptcy, either as the property of the bankrupt or that he had any interest therein, and so far as the books of the A. L. Haley Architect Company show, it was stock that stood in the name of Allen D. Butt.

The bankrupt did not do any business himself after the orgination of the A. L. Haley Company, and all his business was done through that company. At the first hearing he did not testify that when the money fell due and the indebtedness was due, that he was unable to meet it or unable to pay it, and that he then gave the stock to Mrs. Greenwood. There is no mention of this transfer. At the later hearing, he stated that he did not know the law and did not pretend to say where the title would be according to law; but there was no such discussion at the first hearing. The bankrupt testified that at the time that he made out his schedules, he did not believe that he had any interest in the stock, and that at that time the stock had been forfeited for over a year.

It thus appears that the bankrupt has been enjoying property which rightfully and equitably belongs to his creditors. The bankrupt's property has always been under his own control. It does not do for him to say that he does not know whether the title is vested in him or in Mrs. Greenwood. **[10]** Whatever may have been his equity in the property at the time of the filing of the petition in bankruptcy, belonging evidently as the property did to the bankrupt, and used by him, it was his duty to schedule it as an asset. He could not truthfully swear that he had included all his property in his schedule and at the same time omit therefrom any mention of his interest in the 1250 shares of the A. L. Haley, Architect, Incorporated. There is no doubt about the fact that the bankrupt is an architect, and that he took up this scheme of converting his property and the good-

will of his business into a corporation known as the "A. L. Haley, Architect, Incorporated," so that it might not be within the reach of his creditors, and that he could enjoy the benefits of it without accounting therefor to anyone whomsoever. It is evident that from the inception of the corporation to the time of the filing of the petition in bankruptcy, the bankrupt was to enjoy the benefit of the corporation and of all its earnings. That he had transferred the property to Mrs. Greenwood as security for a debt, or as her absolute property, when he continued to enjoy all the benefits of it, is such an unusual and improbable story that the mere recital of it is convincing that the property is the property of the bankrupt, and that if Mrs. Greenwood holds it at all, she only holds it as security for some alleged indebtedness due her from the bankrupt.

Under these circumstances, for the bankrupt not to schedule the property and to continue to insist that the property is not his, is a concealment of property from his trustee which should bar his discharge.

The utter recklessness with which the bankrupt testified at one time in the filing of the schedules that he there scheduled all his property, and on his first examination testified that he was the owner of 1250 shares of stock of the **[11]** A. L. Haley, Architect Company, but that it was pledged as security to Mrs. Greenwood, and that he has enjoyed all the benefits and profits thereof, and that she has taken no part in the meetings of the company and never received any dividend, and then to testify on the second hearing that he had no interest in the property, and that

long before he had given it to Mrs. Greenwood to be hers absolutely, is such a flagrant disregard by the bankrupt of the obligations of his oath taken in this bankruptcy proceeding, that he must stand convicted so far as this record goes of having made a false oath, when he testified before the referee in bankruptcy, and that he did it wilfully, knowingly and fraudulently.

A disclosure of the whole truth in reference to this matter would have enabled the trustee to have recovered this property. It is no excuse that the bankrupt makes, that he did not know the law, or that he was not represented at the first meeting of creditors by an attorney to direct and guide him. He must have known all the facts with reference to these transactions. The essence of his offense is that he concealed property with intent to keep it from his creditors, and that he wilfully, knowingly and fraudulently made different statements in reference thereto while under oath.

That he is not entitled to a discharge under these circumstances and for these reasons is fully sustained by the authorities.

In re Quackenbush, 4 A. B. R. 274;
In re Guilbert, 22 A. B. R. 221–223;
In re Goodman, 22 A. B. R. 570. **[12]**

As to the second specification of opposition to discharge, that the bankrupt has, with intent to conceal his financial condition, failed to keep books of account or records from which such condition might be ascertained, in that the said bankrupt, prior to the institution of the bankruptcy proceedings was

in receipt of a large income from his business as architect and contractor, and that he kept no account of his receipts or disbursements, and kept no books showing that he had received and what he had done with the money, all with the intent to conceal his financial condition, this is charged in the language of the Act, and states all that is required in setting it forth. No further particulars could be given. In re Ginsburg, 12 A. B. R. 459. In the language of the act it charges a failure to keep books of account.

This is a fact, and no further particulars need be given. It is not necessary, as in other specifications setting forth opposition to the bankrupt's discharge, to state that this is an offense that is committed knowingly and fraudulently. It is not the charge of the commission of an offense prohibited by the Bankruptcy Act, but merely a statement of a fact as to the failure to keep books of account from which his financial condition might be ascertained, and with intent to conceal his financial condition.

The testimony in reference to this is without contradiction, that the bankrupt himself kept no books of account; that the A. L. Haley, Architect, Incorporated, kept books of account in which there was an account with the bankrupt charging him for the salary which he drew from the company, and also charging him with other moneys which he drew from the company from time to time. Of these moneys which were drawn from the A. L. Haley Architect Company by the bankrupt, no **[13]** account was kept. The bankrupt had no books or

records from which it could be ascertained what he had done with the large sums of money, amounting besides salary to over ten thousand dollars, which he had drawn from the A. L. Haley Architect Company. That he did not keep any such books of account or any records, and with the intent to conceal his true financial condition, is evident from the fact that he was being constantly harassed by creditors who on supplemental proceedings were endeavoring to find out his true financial condition, and not withstanding that fact, he kept no books of account for their inspection. It was the constant harassing of him on supplemental proceedings that forced him into bankruptcy. This is not a case of the failure to keep proper books of account, but the failure to keep any books which will show what the bankrupt did with the money which he was continually receiving.

Taken in connection with the fact that the bankrupt was the principal factor in the corporation known as the A. L. Haley, Architect Company, that he did all the business just as he saw fit to do, and used all the money that came into that company without consulting any other of the stockholders of the company, and thereafter kept no account of the money, it must be held that the charge made in the second specification of objection, that he failed to keep books of account or records from which his financial condition might be ascertained, with intent to conceal his true financial condition, must be sustained.

It is claimed by the bankrupt that these objections

and specifications should not be sustained, because of the order that was made in the bankruptcy proceedings upon the petition of the trustee, filed July 28, 1908, for an order on Mrs. M. B. Greenwood to show cause why she should not surrender **[14]** the certificate for the 1250 shares of stock of the A. L. Haley Company, Incorporated, held by her, to the trustee as an asset of the estate of the bankrupt, and why she should not be restrained from disposing of said stock or encumbering or hypothecating the same, or why said bankrupt should not be declared to be the lawful owner of said stock, subject to the encumbrance which said bankrupt had placed upon said stock in favor of said Greenwood, and the order entered thereon on the 24th day of September, 1909, discharging the rule to show cause against Mrs. M. B. Greenwood.

This petition of the trustee set forth the incorporation of the A. L. Haley Architect Company and the issuance of certificate No. 4 of said company to Allen D. Butt for 1250 shares, and that subsequent to that time a memorandum was made upon the stub of such stock-book, indicating that said certificate was delivered to Mrs. M. B. Greenwood; that the bankrupt had previously testified that the said stock was owned by him, but that it was hypothecated by him as security to Mrs. Greenwood for two thousand dollars, and sets forth the interest of the said bankrupt in said stock as shown before the referee at the first hearing and examination of said bankrupt.

After a hearing on the rule to show cause entered upon said petition, an order was entered on the 24th

day of September, 1909, by the referee in charge of said proceeding as follows:

"This cause coming on to be heard, and the court having heard the evidence, the Court finds that there is not sufficient evidence to make a summary order upon Mrs. M. Greenwood to turn over the stock to the trustee, and without prejudice to the right of the trustee to bring any plenary action if it may see fit, it is ordered that the rule to **[15]** show cause may be discharged."

There is nothing in this order that is *res adjudicata* of the proceedings here. Neither the bankrupt nor this objecting creditor were parties to that proceeding, and it is evident from the order, that upon the showing made, Mrs. Greenwood claimed the property adversely to the trustee, and that the Court therefore was powerless to make a summary order upon her to deliver it to the trustee, and that that was all that was decided in that proceeding. It was not in any sense determinative of the matters and questions here involved.

As conclusions from the foregoing, I therefore report that the objections and the specifications of opposition to the said bankrupt's discharge and each of them should be sustained.

That said bankrupt is not entitled to his discharge, and that his application for a discharge should be denied.

Respectfully submitted,

LYNN HELM.

Expenses of Referee:

Reporter's fees.... ....$16.00

Master's fees..... .....

[Endorsed]: No. 347. In the United States District Court, Southern District of California, Southern Division. In the Matter of A. L. Haley, Bankrupt. Report of Special Master on Petition for Discharge and Opposition Thereto. Filed Feb. 23, 1911, at 9 o'clock A. M. Lynn Helm, Referee, Special Master.

Filed Feby. 23, 1911, at 20 min. past 10 o'clock A. M. E. H. Owen, Clerk. By ————, Deputy Clerk. Lynn Helm, 510 Los Angeles Trust Building, Los Angeles, Cal. **[16]**

In the District Court of the United States, Southern District of California, Southern Division.

No. 347.

In the Matter of A. L. HALEY,

Bankrupt.

Exceptions to Report of Special Master.

Now comes A. L. Haley, bankrupt, and files his exceptions to the report of Special Master Lynn Helm herein as follows, to wit:

1. He excepts to the finding that John D. Pope could object to the discharge of bankrupt, upon the ground that the said John D. Pope has not shown himself to be a party in interest, for the reason that he did not file his claim within one year after the adjudication of bankruptcy herein, nor had he at the time of the hearing filed any assignment of any claim of any kind or character, nor was he mentioned in the original proceedings as having any claim against

the said bankrupt, and upon the ground that he was not in any manner a party in interest as contemplated by the law relating to said matters.

2. He excepts to the finding of the Court as to the evidence upon the ground that it is not a correct finding as to the evidence, and upon the ground that he finds facts outside of the issues and that there was no evidence of any kind or character showing that the said corporation was a scheme for said bankrupt to escape his creditors or that he ever drew any dividends at all, and particularly the finding that the bankrupt was the owner of the stock instead of Mrs. Greenwood, as the evidence clearly showed that the stock had been transferred to Mrs. Greenwood to satisfy her claim against the stock long prior to the proceeding in bankruptcy, and that the said Haley had not concealed his property from his creditors [17] and that the said Haley never at any time concealed any fact or attempted to conceal any fact from his creditors in bankruptcy, but at all times, from the first meeting of the creditors, made a clean breast of the facts surrounding the transaction with Mrs. Greenwood relating to said stock, and related the facts as he understood them, and stated that it was impossible for him to decide the point of law as to whether there had been a legal transfer of the stock to Mrs. Greenwood or not, and upon the ground that the said Master in his first finding found that the bankrupt was correct in his statement and found that the said Mrs. Greenwood was the owner of the stock, and discharged the order of inquiry into said matter, and subsequently reverses himself in the

present finding; and upon the ground that if it is a matter in which the said Master finds it impossible to decide in the first instance whether the said Haley was the owner of said stock or not, that it is quite clear that the said bankrupt in being unable to so decide was not guilty of any fraud or deceit or false oath in said premises. And the said bankrupt excepts to the finding of the said Master that the testimony of the said bankrupt was utterly reckless, when the evidence shows that he told a plain, simple, unvarnished story relating to the said transaction, not uttered recklessly, carelessly or falsely, but based upon the facts as he understood them. And excepts to the finding that his testimony was such a flagrant disregard of the obligations of his oath, that he must stand convicted by the said Master of having made a false oath when he testified before the Referee in Bankruptcy, or that he did it wilfully or falsely. And upon the further ground that the said question was a complicated question of law and one which the said Master first, as Referee, decided in favor of the bankrupt, and subsequently reversed himself and found against the said bankrupt. And upon the further ground that at said final hearing there was no evidence offered at all by the said contestant John [18] D. Pope, the latter not being present at said hearing or giving any testimony therein, and that all the testimony that was given at said final hearing was given by the trustee therein who, under the law is supposed to be impartial in said proceedings, and by the attorney for the trustee, and not by the said contestant.

3. The said bankrupt further excepts to the finding that he failed to keep books of account owing to supplemental proceedings or harassing creditors, to conceal from them his true financial condition, and particularly upon the ground that the said bankrupt had never at any time kept books of his personal accounts or individual accounts, for the reason that he was not in business personally but was an employee of a corporation upon a salary, and that he fully and completely accounted for his entire income and all of his assets.

4. And he excepts to the finding that the order to show cause regarding Mrs. Greenwood was not *res adjudicata* of matters here involved, and that he is not entitled to a discharge, and particularly upon the ground that at the time the said Referee found in regard to the ownership of the stock and found that the same was the property of Mrs. Greenwood that the evidence then was fresh in the mind of the said Referee and that after a lapse of a long period of time and without further evidence upon that point the said Referee, without good reason or cause, as the said bankrupt believes and therefore files his objections and exceptions, without additional evidence sufficient to sustain said finding.

5. And the said bankrupt excepts to each and every finding of the said Master upon the ground that the same is contrary to law and not supported by the evidence.

Wherefore, he asks that this Honorable Court hear each and all of the issues involved in this matter at as early a date as is convenient to the said court; and

he particularly prays that **[19]** the said Court shall set aside the findings and report of the said Master, and grant him a discharge in bankruptcy.

A. L. HALEY,
Bankrupt.

R. L. HORTON,
Attorney for Bankrupt.

[Notarial]
State of California,
County of Los Angeles,—ss.

A. L. Haley, being by me first duly sworn, deposes and says: That he is the bankrupt in the above-entitled matter; that he has heard read the foregoing exceptions and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein states upon—— information or belief, and as to those matters that he believes it to be true.

[Notarial Seal] A. L. HALEY.

Subscribed and sworn to before me this 25th day of February, 1911.

[Seal] R. L. HORTON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: No. 347. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of A. L. Haley, Bankrupt. Exceptions to Report of Special Master. Filed Feb. 25, 1911, at 15 min. past 3 o'clock P. M. E. H. Owen, Clerk. C. E. Scott, Deputy.

Received copy of the within ——— this —— day of ————, 191—, Attorney for ————. R. L. Horton, Rooms 210–211, Henne Block, Telephones: Main 822, Home A9102, 122 W. Third Street, Los Angeles, California, Attorney for Bankrupt. **[20]**

[Order Denying Exceptions to Report of Special Master and Affirming Said Report.]

At a stated Term, to wit, the January Term, A. D. 1911, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the 24th day of April, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable OLIN WELLBORN, District Judge.

No. 347—Bkcy. S. D.

In re HALEY,

Bankrupt.

This matter coming on this day to be heard on exceptions to the report of the Special Master herein; R. L. Horton, Esq., appearing as counsel for the bankrupt, and Messrs. Shankland & Chandler appearing as counsel for creditors; and said exceptions to the report of Special Master having been argued by R. L. Horton, Esq., of counsel for the bankrupt, by J. P. Chandler, Esq., of counsel for creditors, and by R. L. Horton, Esq., of counsel for bankrupt in reply; and said exceptions having been submitted to the Court for its consideration and decision, and

the Court having duly considered the same and being fully advised in the premises, it is ordered that said exceptions be, and the same hereby are denied, and that said report of the Special Master herein be, and the same hereby is affirmed. **[21]**

In the District Court of the United States, Southern District of California, Southern Division.

No. 347.

In the Matter of A. L. HALEY,

Bankrupt.

Petition to Revise in Matter of Law.

To the Honorable Judges of the *Circuit of* Appeals of the Circuit of the United States:

Your petitioner respectfully shows, that he resides at Los Angeles, California, and is a bankrupt, who was so adjudged by the District Court of the United States, in and for the Southern District of California, on the 17th day of June, 1909.

That after such adjudication the following proceedings were had in the case of the said bankrupt:

That the estate of said bankrupt was duly and regularly administered upon, and on the 11th day of November, 1909, the said bankrupt petitioned the above court for his discharge and the same was set for the 17th day of December, A. D. 1909, for hearing. Thereafter, on the 30th day of December, 1909, objections to the discharge of said bankrupt were filed by one John D. Pope, which objections and answer thereto are hereto attached and marked Exhibit

"A," and made a part of this application. Thereafter, said matters as to the discharge of said bankrupt was referred to Special Master Lynn Helm, Esq., to ascertain and report the facts and his opinion, which said report was, on the 13th day of February, 1911, filed in the above court recommending that the objections be sustained and said discharge denied. Thereafter, said matter was heard by the above Honorable Court, and on the 8th day of May, 1911, an order was granted and entered by said District Court of the United States sustaining and confirming the report of such Special Master and sustaining the objections of said Pope and denying the application [22] for discharge of the said bankrupt, which said order is hereto attached and marked Exhibit "B" and made a part of this application.

That said order was erroneous in the matters of law in the following particulars:

1. In sustaining the finding that John D. Pope could object to the discharge of said bankrupt, upon the ground that he failed to show himself a party in interest as required by law.

2. In sustaining said report that the said bankrupt concealed his property or, any part or portion thereof.

3. In confirming the finding of the said Master that the bankrupt has been guilty of having made false oath.

4. In confirming the report of the said Master that he failed to keep books of account.

5. In denying the application for the discharge of the said bankrupt.

6. In allowing the said John D. Pope costs.

Wherefore, your petitioner feeling aggrieved because of such order, asks that the same may be revised in matter of law by your Honorable Court as provided in section 24-B of the Bankruptcy Law and the rules and practices in such case provided.

A. L. HALEY,
Petitioner.

By R. L. HORTON,
Attorney for Petitioner. **[23]**

Exhibit "A."

In the District Court of the United States, Southern District of California, Southern Division.

In the Matter of A. L. HALEY,
Bankrupt.

Objections to Discharge of Bankrupt.

John D. Pope, of Los Angeles, County of Los Angeles, State of California, a party interested in the estate of said A. L. Haley, Bankrupt, whose claim will be released by a discharge of the bankrupt and whose claim is as follows, being an assignment made by Charles E. Fish to said John D. Pope on April 28, 1906, of all the right of said Charles E. Fish in and to that certain judgment obtained in the case of Charles E. Fish vs. Arthur L. Haley in the Superior Court of the County of Los Angeles for One Thousand Fifty-three and Sixty-six Hundredths ($1,053.66) Dollars and cost, said judgment being scheduled by A. L. Haley in the name of Charles E. Fish and Los Angeles Trust Company, the Trustee herein do hereby oppose the granting to him of the discharge

from his debts, and for the grounds of such opposition, do file the following specifications:

The estate is still being administered and is not closed.

First. The said Bankrupt made a false oath in relation to the proceeding in *bankrupt,* in that, during the examination of said bankrupt in the course of the bankruptcy proceedings in the estate of A. L. Haley, bankrupt, before the Honorable Lynn Helm, Referee in Bankruptcy, having jurisdiction thereof, in the City of Los Angeles, the said Bankrupt being first duly sworn, and being interrogated in relation to the ownership of certain of the capital stock in the A. L. Haley Architect Company, a corporation, which said stock was of great value, the said bankrupt testified that he was the owner of twelve hundred and fifty (1,250) shares of the capital stock of said company, and that said stock was pledged with Mrs. M. B. Greenwood as security for an indebtedness which he owed to the said M. B. Greenwood; and subsequently the said bankrupt, during an examination of said bankrupt in the estate of A. L. Haley, bankrupt, before the Honorable Lynn Helm, Referee in Bankruptcy, having jurisdiction thereof, in the City of Los Angeles, the said bankrupt being first duly sworn, and being interrogated in relation to the ownership of the said stock hereinabove mentioned in the said A. L. Haley Architect Company, did knowingly and fraudulently make oath and declare that the aforesaid stock was owned by said M. B. Greenwood, and not owned by himself, and that he had given said stock to her prior to the institution

of the bankruptcy proceedings.

Second. That said bankrupt, has, with intent to conceal his financial condition, failed to keep books of account, or of records, from which such condition might be ascertained, in that the said A. L. Haley, bankrupt, prior to the institution of bankruptcy proceedings, was in receipt of a large income from his business as architect and contractor, and that he kept no account of his receipts or disbursements, and kept no books showing what he had received, or what he had done with the money, all with intent to conceal his financial condition. **[24]**

Third. That the said bankrupt has concealed, while a bankrupt, from his trustee certain property belonging to his estate in bankruptcy, in that the said bankrupt has knowingly and fraudulently concealed from said trustee his ownership of twelve hundred and fifty (1,250) shares of the capital stock of the A. L. Haley Architect Company, which said stock is of great value, and has knowingly and fraudulently failed to schedule said stock in his schedule filed herein, said stock standing in the name of Allen D. Budd on the books of the company and the certificate thereof is in the possession of M. B. Greenwood.

JOHN D. POPE,
Creditor.
LOS ANGELES TRUST CO.,
Trustee.
By L. S. CHANDLER,
Trust Officer.
SHANKLAND & CHANDLER,
Attorneys for Creditor and Trustee. **[25]**

In the District Court of the United States, Southern District of California, Southern Division.

In the Matter of A. L. HALEY,

Bankrupt.

Answer of Bankrupt to Objections.

Now comes A. L. Haley, bankrupt, and in answer to objections of John D. Pope, denies and alleges as follows:

First. Denies that he made a false oath in relation to the proceeding in bankruptcy in that during the examination of said bankrupt in the course of the bankruptcy proceedings in the estate of said bankrupt before the Honorable Lynn Helm, Referee in Bankruptcy, in relation to the ownership of certain of the capital stock in the A. L. Haley Architect Company, a corporation, or at all, or that said stock was of great value, and denies that he testified falsely in any particular during said proceedings, but alleges that he testified at one time he owned said shares of stock referred to, but subsequently pledged the same to the said Mrs. Greenwood as security for an indebtedness, and that he was unable to pay said indebtedness, and that he thereafter, upon his failure to and inability to redeem said stock, informed the said Greenwood that she could keep, have and retain said stock for said indebtedness, and he informed the said Honorable Lynn Helm that he was unable to say whether said transaction amounted to a sale or assignment of the stock or not, or whether the said Greenwood still held the same as security for the original loan.

Second. He denies that he has with intent to conceal his financial condition, failed to keep books of account or records from which said condition might be ascertained, and denies that prior to the institution of said bankruptcy proceedings he was in **[26]** the receipt of a large income from his business as architect or contractor, or at all, except a sufficient income to pay his living expenses. And he further alleges that he has never at any time kept a book of personal accounts of receipts and disbursements on account of his personal income and disbursements, but alleges that after paying his living expenses that he had no surplus of funds of any kind or character, and that there was no occasion or necessity for the said bankrupt to keep books of personal receipts and expenditures.

Third. Denies that said bankrupt has concealed, while a bankrupt, from his trustee certain or any property belonging to his said estate in bankruptcy, or that he has fraudulently or knowingly concealed from said trustee his ownership of twelve hundred and fifty (1,250) shares, or any shares, of the capital stock of the said A. L. Haley Architect Company, or that said stock is of great value, or that he has knowingly or fraudulently failed to schedule any property belonging to himself or any property of any kind or character that he believed he had any interest in whatsoever, but alleges that he truthfully and honestly made a report of all of his assets in said proceeding and turned over to his trustee all of his assets and property of each and every kind in which he had any interest whatsoever.

Fourth. That on the 24th day of September, 1909, at two o'clock P. M. of that day, the said matters and issues herein contained and involved were duly and regularly heard and tried before the said Honorable Lynn Helm, Referee in Bankruptcy, and a number of witnesses examined, and thereafter and on said date the said referee in bankruptcy duly and regularly made and entered an order therein in favor of the said bankrupt, and holding and deciding in said matters that the bankrupt was not guilty of the matters herein charged and set forth, and that said order has not been vacated or set aside, but still remains in force and [27] effect, as duly given and made by the said referee as above alleged.

Wherefore, the said bankrupt asks that said objections be denied and that he be granted his discharge.

R. L. HORTON,
Attorney for Said Bankrupt.

State of California,
County of Los Angeles,—ss.

A. L. Haley, being by me first duly sworn, deposes and says: That he is the bankrupt in the above-entitled action; that he has read the foregoing Answer of Bankrupt to Objections and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

A. L. HALEY.

Subscribed and sworn to before me this 21 day of January, 1910.

R. L. HORTON,

Notary Public in and for Los Angeles County, State of California. **[28]**

In the District Court of the United States for the Southern District of California.

No. 347—IN BANKRUPTCY.

In the Matter of A. L. HALEY,

Bankrupt.

Amendment to Answer of Bankrupt.

After the word "Follow," page one, line 11, insert the following:

a. Denies that the said John D. Pope is a party interested in the estate of A. L. Haley, bankrupt, or that he has any claim against said estate whatever or any interest in said estate whatever, but alleges that more than one year has elapsed since said bankrupt was adjudged a bankrupt by the above court, to wit, on the 17th day of June, 1909, and alleges that the said John D. Pope has not filed any claim against said estate and the period of time to file said claim or any claim against the estate of said bankrupt has expired, and the said bankrupt alleges that the right of the said John D. Pope to file a claim in said estate has expired by the provisions of section 57, subdivision N of the Bankruptcy Act now in force and relating to said proceeding.

R. L. HORTON,

Attorney for said Bankrupt. **[29]**

Exhibit "B."

In the District Court of the United States, Southern District of California, Southern Division.

ORDER DENYING DISCHARGE.

In the Matter of the Estate of A. L. HALEY,
Bankrupt.

[Order Confirming Report of Special Master, Sustaining Specifications of Objections of John D. Pope, Denying Application for Discharge of Bankrupt, etc.]

Application having been made by A. L. Haley, Bankrupt, for a discharge herein, and specifications of objections having been filed thereto by John D. Pope, a creditor, and a party interested, and such specifications having been referred to Lynn Helm, Esquire, as special master, to ascertain and report the facts with his opinion, and such special master having filed his report on the 13th day of February, 1911, and recommending that such specifications be sustained, and exceptions to such report having been duly filed by said bankrupt and the same having been argued, and, after hearing J. P. Chandler, Esquire, attorney for the objecting creditor, on the motion, and R. L. Horton, Esquire, attorney for the bankrupt, in opposition thereto:

NOW, THEREFORE, on motion of J. P. Chandler, attorney for the objecting creditor, IT IS ORDERED that the report of such special master be and it is hereby in all respects confirmed.

That the specifications of objections of John D.

Pope, a creditor and party interested, be and the same are hereby sustained.

That the application for discharge of the said A. L. Haley, Bankrupt, be and the same is hereby denied.

And that the said objecting creditor, John D. Pope, be allowed his costs herein, hereafter to be taxed by this court.

OLIN WELLBORN,
District Judge.

[Endorsed]: Original. No. 347. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of A. L. Haley, Bankrupt. Petition to Revise in the Matter of Law. Received a copy of the within this 17th day of May, 1911. Shankland & Chandler, Attorneys for John D. Pope.

Filed May 17, 1911, at 35 min. past 4 o'clock P. M. E. H. Owen, Clerk. C. E. Scott, Deputy. R. L. Horton, Attorney at Law, Rooms 210–211 Henne Building. Telephones: Main 822, Home A5102, 122 W. Third Street, Los Angeles, California. **[30]**

In the District Court of the United States, Southern District of California, Southern Division.

No. 347.

In the Matter of A. L. HALEY,

Bankrupt.

Order Allowing Petition for Revision.

WHEREAS, application has been made for revision in matter of law by the *Circuit of* Appeals of the

Ninth Circuit of the United States of the order entered herein on the 8th day of May, 1911, and the Court being satisfied that the question there determined is one of which revision may be asked as provided in section 24b of the Bankruptcy Law, and that the application should be granted; on motion of R. L. Horton, Esq., Attorney for petitioner, IT IS ORDERED that the order of this Court made and entered herein on the 8th day of May, 1911, be revised in matter of law, in the Circuit Court of Appeals, Ninth Circuit, of the United States, as provided by section 24b *and* the Bankruptcy Law and the rules and practice of this Court.

That the clerk within thirty days of this date prepare, at the expense of the petitioner, a certified copy of such order and of the record of this case pertinent to such order, and file the same with the clerk of such Circuit Court of Appeals.

Witness the Honorable OLIN WELLBORN, Judge of the said court and the seal thereof at the city of Los Angeles, in said district, on the 17th day of May, 1911.

OLIN WELLBORN,
Judge.

[Endorsed]: Original. No. 347. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of A. L. Haley, Bankrupt. Order Allowing Petition for Revision. Filed May 17, 1911, at 55 min. past 4 o'clock P. M. E. H. Owen, Clerk. C. E. Scott, Deputy. R. L. Horton, Attorney at Law, Rooms 210–211 Henne Building. Telephones: Main 822,

Home A5102, 122 W. Third Street, Los Angeles, California. **[31]**

In the District Court of the United States, Southern District of California, Southern Division.

No. 347.

In the Matter of A. L. HALEY,

Bankrupt.

Notice of Filing Petition for Review.

To Messrs. Shankland & Chandler, Attorneys for John D. Pope, Objector, and Trustee of the Estate of said Bankrupt:

You are hereby notified that that certain petition for review, a copy of which was duly served on you on the 17th day of May, 1911, was on said date duly presented to the Honorable Olin Wellborn, Judge of the above court, for allowance, and an order made by the said Judge allowing said petition for review in matters of law, and that the same has been filed with the clerk of the above court, with instructions to prepare the necessary transcript of record in said matter.

R. L. HORTON,
Attorney for said Bankrupt.

Dated May 18, 1911.

[Endorsed]: Original. No. 347. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of A. L. Haley, Bankrupt. Notice of Filing Petition for Review.

Received a copy of the within notice this 18th day of May, 1911.

SHANKLAND & CHANDLER,
Attorneys for John D. Pope, and the Trustee of the Estate of said Bankrupt.

Filed May 18, 1911, at 40 min. past 3 o'clock P. M. E. H. Owen, Clerk. C. E. Scott, Deputy. R. L. Horton, Attorney at Law, Rooms 210–211 Henne Building. Telephones: Main 822, Home A5102, 122 W. Third Street, Los Angeles, California, Atty. for Bankrupt. **[32]**

[Assignment of Judgment.]

In the Superior Court of the State of California, in and for the County of Los Angeles.

No. 47,748—Dept. 6.

CHARLES E. FISH,

Plaintiff,

vs.

ARTHUR L. HALEY,

Defendant,

and

COLLINS HOTEL COMPANY (a Corporation), JOHN D. POPE and J. W. EDDY,
Defendants in Cross-complaint.

For value received I hereby sell, assign and transfer to John D. Pope the judgment for Ten Hundred and Fifty-three and 66/100 Dollars ($1053.66) and costs, rendered October 20th, 1905, in my favor in said action, and authorize said Pope, at his own cost

and expense, to take any action that may be deemed necessary to enforce the payment of said judgment.

CHARLES E. FISH.

Dated April 28th, 1906.

[Endorsed]: No. 47,748. Dept. 6. In the Superior Court of Los Angeles County, California. Charles E. Fish, Plaintiff, vs. Arthur L. Haley et al., Defendants. Assignment of Judgment. Received copy of within —— day of ————, 190—. ————, Attorney for ————. John D. Pope, Stimson Building, Los Angeles, California, Attorney for Plaintiff. Filed Feb. 20, 1911, at 2 o'clock P. M. Lynn Helm, Referee.

Filed in the office of the Referee in Bankruptcy, in case No. 347, this 20 day of February, at 2 o'clock P. M., and withdrawn on substituting a true copy on the 21 day of February, 1911. Lynn Helm, Referee in Bankruptcy, Los Angeles County, Southern District of California. By ————. **[33]**

Certificate of Clerk U. S. District Court to Record.

I, E. H. Owen, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of the originals: "Report of Special Master on Petition of Bankrupt for Discharge and upon the Specifications of Opposition thereto of John D. Pope, a creditor," "Exceptions to Report of Special Master," "Order Affirming Report of Special Master," "Petition to Revise in Matter of Law," "Order Allowing Petition

for Revision," "Notice of Filing Petition for Review," "Assignment of Judgment in Case of Fish vs. Haley to John D. Pope," "Names of Attorneys," and "Certificate of Clerk to Record," as made pursuant to praecipe of R. L. Horton, Esq., attorney for bankrupt and appellant.

In witness I have hereunto set my hand and affixed the seal of said Court, this 3d day of June, A. D. 1911.

[Seal] E. H. OWEN,

Clerk U. S. District Court for the Southern District of California. **[34]**

[Endorsed]: No. 1997. United States Circuit Court of Appeals for the Ninth Circuit. A. L. Haley, Petitioner, vs. John D. Pope, Respondent. In the Matter of A. L. Haley, Bankrupt. Petition for Revision under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Southern District of California, Southern Division.

Filed June 12, 1911.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1997

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

A. L. Haley,
Petitioner,
vs.
John D. Pope,
Respondent.

In the Matter of
A. L. HALEY,
Bankrupt.

PETITIONER'S BRIEF.

STATEMENT OF THE CASE.

The petitioner was duly adjudicated a bankrupt on the 17th day of June, 1909, and an order of reference was duly made to Honorable Lynn Helm, referee in bankruptcy, to take such further proceedings thereunder as are required by the acts of Congress relating to bankruptcy. A trustee of the bankrupt's estate was duly appointed. On July 28, 1909, a petition by the trustee was filed for an order on Mrs. M. B. Greenwood to show cause why she should not surrender a certain certificate

for 1250 shares of stock in the A. L. Haley Company, Incorporated, claimed to be owned by her, to the trustee as an asset of the estate of the bankrupt, and why said bankrupt should not be declared to be the lawful owner of said stock subject to an incumbrance of $2,000.00 which said bankrupt had placed upon said stock in favor of said Greenwood. On the 24th day of September, 1909, an order was entered by the said referee discharging the rule to show cause against Mrs. M. B. Greenwood, said referee making the following finding:

"The court finds that there is not sufficient evidence to "make a summary order upon Mrs. M. Greenwood to "turn over the stock to the trustee."

That thereafter on the 18th day of November, 1909, the bankrupt filed his petition for a discharge, and thereafter on the 29th day of December, 1909, respondent filed objections to said discharge of said bankrupt, and on the 25th day of June, 1910, the matter was referred to Hon. Lynn Helm as special master. The said special master on the 20th day of February, 1911, prepared his report holding the bankrupt not entitled to his discharge. The said respondent as such objector filed no claim in the estate of said bankrupt and filed no claim of any kind before the special master at said hearing, but on the 21st day of February, 1911, filed a true copy of an assignment of a certain judgment in the case of Charles E. Fish v. Arthur L. Haley. Charles E. Fish was scheduled as a creditor in the original schedule of the bankrupt filed on the 17th day of June, 1909, but neither said Fish nor the said respondent ever filed any claim in said bankruptcy proceedings.

These matters each and all appear in the transcript of the record, and the said bankrupt's petition for revision attacks the sufficiency in law of the said master's report, and contends that the facts set forth therein show that he was entitled to his discharge. Special references to said record will be pointed out by proper page references in this brief.

Specification of Errors and Argument Thereon.

The petition to revise in matter of law is set forth at page 23 of the transcript of the record in this case, and the particulars in which it is claimed that the order of the lower court is erroneous in matters of law is set forth on page 24. We will discuss these alleged errors in order.

Error 1: In sustaining the finding of the master that John D. Pope could object to the discharge of said bankrupt. This error is assigned upon the ground that the said John D. Pope failed to show himself a party in interest as required by law. This matter is discussed in the report of the special master at page 3 *et seq.* The objections it seems were joined in by the trustee in bankruptcy, but the special master decides against the trustee on page 4 in the following language:

"The trustee must show how and why the trustee is a "party in interest, which is not shown in these specifica- "tions."

Therefore, our discussion will be confined to the want of interest of the said John D. Pope. On page 4 the special master recites the fact that the bankrupt at all times during this proceeding

"opposed any consideration of the opposing creditor's "objections on the ground that the opposing creditor had "no interest in opposing the bankrupt's discharge, for "the reason that the opposing creditor had not proved "his claim, and could not prove his claim, because the "year since the adjudication had expired, prior to the "filing of any opposition to said bankrupt's discharge; "and that by reason thereof the opposing creditor could "not share in any dividends in the bankrupt's estate, if "any there were."

The master's report continues:

"Subject to its relevancy, it was agreed that the as- "signment made by Charles E. Fish to the said objecting "creditor, John D. Pope, on April 28, 1906, of all the "right and interest of the said C. E. Fish in and to said "judgment, should be received in evidence."

But the said assignment, as appears from the record, was not offered or received in evidence at said hearing, nor had said assignment been filed at the time the said special master prepared his report upon said reference. This appears on pages 1 and 2 of the record, wherein it is recited that the matter was referred to the special master on the 25th of January, 1910, upon the petition of said bankrupt for a discharge, filed November 18th, 1909, and the objections of John D. Pope to said discharge of said bankrupt, filed December 29, 1909, and that the same was continued until the second day of November, 1911 (the latter would appear to be error and should be 1910) and thereafter:

"the testimony taken upon said hearing was to be writ- "ten up and was not furnished to me until this day, "February 20th, 1911."

Thus it would seem from the master's report that this matter was decided by him on the 20th day of February, 1911. On page 36 of the transcript appears the assignment of judgment and on page 37 it appears that a true copy of said assignment was not filed with said master until the 21st day of February, 1911.

Thus the record shows:

a. That John D. Pope never at any time filed any claim of any kind or character in said bankruptcy proceedings;

b. That from the date of his objections to the discharge of said bankrupt, filed November 18th, 1909, up to and including the date of the decision upon said matters by the special master, February 20th, 1911, he had filed no claim of any kind or character, or in any manner shown that he was a party in interest, nor had he filed in said proceedings any assignment of said judgment, but that the same was filed after said hearing had been had before the said referee and after the said referee had had the matter under submission for more than three and one-half months, and had finally reached a decision in said matter and prepared his report, which the record shows was prepared on the 20th of February, 1911. These facts appear from the transcript on pages 1 and 2 and 37.

c. If the court shall hold that the filing had on the 21st day of February, 1911, of a true copy of said assignment was sufficient to entitle said assignment to be considered as evidence upon said hearing, then the same was subject to the objection of the bankrupt that the same was incompetent, irrelevant and immaterial.

The court will consider the long time that elapsed from the filing by the bankrupt of his schedules on the 17th day of June, 1909 [see transcript at bottom of page 4], and the filing of this assignment of judgment, which in itself is in no sense a claim against the estate, made on the 21st day of February, 1911, a lapse of nearly two years, and subsequent to the hearing in question and subsequent to the date of the decision of the special master. The alleged claim of the respondent, if it had any force or effect in the matter whatsoever, was stale. The law requires that the claim shall be filed within a period of one year from the date of the adjudication. The respondent's assignor never filed any claim of any kind or character, nor has the respondent. Thus the record shows that at no time during the hearing before the special master had the respondent offered any evidence of any interest of any kind or character in the estate of the bankrupt, either substantial or contingent. No paper of any kind filed subsequent to the hearing can have the effect of relating back to the date of the hearing, for the law contemplates that it must be first shown that the party opposing is a party in interest. This he must show as a foundation for his right to offer proofs in opposition to the discharge of the bankrupt. This, we think, clearly appears from the language of the statute itself, section 14, sub. b of the Bankruptcy Act, the language of which as to this matter is as follows:

"The judge shall hear the application for a discharge, "and such proofs and pleas as may be made in opposition "thereto by parties in interest."

In 94 Fed. Rep. 638 it is held:

"Before granting an order for the examination of a

"bankrupt the referee should be satisfied that the party "applying for the order is in fact a creditor of the bank- "rupt."

Section 2459 Remington on Bankruptcy provides:

"Any party in interest, and only such, may oppose the "bankrupt's discharge."

Section 2460 *id.* provides:

"Within the purview of this provision he must have a "pecuniary interest."

In re Levy, 13 A. B. R. 314, 133 Fed. 572.

Section 2467 of Remington declares that the law is liberal towards the bankrupt as to his discharge, and that there should be a strict construction in his favor.

"The act is very liberal towards the bankrupt as to his "discharge, and strict construction of the terms under "which opposition will be sustained, are had in favor of "the bankrupt's discharge."

"Creditors who have not filed their claims are not par- "ties to the proceeding and cannot participate in the "proceedings in bankruptcy."

In re Ogles (D. C. Tenn. 2 A. B. R. 514).

"The term 'parties in interest' as used in sections 57d "and 57c, means those who have an interest in the *res* "which is to be administered and distributed in the bank- "ruptcy proceedings."

Matter of Sully & Co. (C. C. A. 2d Cir.), Vol. 18, A. B. R. 125.

A similar provision of the law has been construed by our supreme courts. The expression occurs in section 1307 of the Code of Civil Procedure, as follows:

"Any person interested may appear and contest the "will."

It has been decided under this section that the contestant must make this preliminary proof before he has any standing in court.

"To maintain a contest at all (contestant) must prove "at the outset that he has an interest in the estate."

Estate of Latour, 140 Cal. 414;
Frank v. Shipley, 22 Ore. 104;
Estate of Hickman, 140 Cal. 609;
State v. Superior Court, 148 Cal. 55.

Even giving the rule the most liberal construction it could hardly be held that the filing of the assignment of judgment so long after the hearing and even after the decision of the special master upon the point, was a sufficient or any compliance with the provisions of law in this particular.

Error 2: It was error to sustain the report of the special master to the effect that the bankrupt concealed his property or any part or portion thereof.

We search in vain the master's report for any conclusion or finding upon this matter that would bring the bankrupt under the penalty laid down in section 14 of the Bankruptcy Act or subdivision b of said section which covers the question in point. This provision of the law requires that the bankrupt shall have knowingly and fraudulently concealed while a bankrupt or after his discharge, from his trustee, any of the property belonging to his estate. The evidence upon this point is given in full in the master's report at page 7 *et seq.* of the

transcript of the record, and it is in brief, that 1250 shares of stock in the A. L. Haley Company was originally issued to Allen D. Butt; that Mr. Butt thereafter, upon consideration, assigned the stock to one Mrs. Greenwood; the latter held the stock as security for a loan of two thousand dollars she had made to the bankrupt; that subsequently Mrs. Greenwood called upon the bankrupt for payment of the loan due her; that he was unable to pay her the loan and that he gave her the stock and that he was not able to decide whether the stock was hers or not. This stock was not scheduled. At page 10 of the record and as a part of the master's report, is the following:

"The bankrupt testified that at the time he made "out his schedules he did not believe he had any interest "in the stock, and at that time the stock had been for- "feited for over a year."

Thus there is nothing in the facts recited by the master to show that the bankrupt knowingly and fraudulently concealed, while a bankrupt, from his trustee any of the property belonging to his estate. According to the master's report the stock had been transferred to Mrs. Greenwood as security for a loan of two thousand dollars; that upon failure of the bankrupt to meet the loan the stock was transferred to her absolutely, as a liquidation of the indebtedness, and this had all been done over a year before the bankruptcy proceedings, and at that time "the "bankrupt did not believe that he had any interest in the "stock." [Tr. p. 10.] There was no intentional concealment and certainly there was no fraud. The facts recited in the master's report clearly and conclusively show

this. It shows that the stock had been forfeited for more than a year prior to the filing of the petition in bankruptcy. [Tr. p. 10.]

"There must be clear proof of the ownership in fact "by the bankrupt of the property in question, and clear "knowledge of such fact on his part, to bring the matter "within the provisions of this section."

Fellows v. Frendenhall, 102 Fed. 731.

"Failure to schedule or surrender property to trustee "is not *per se* or *ipso facto* to intentionally or fraudulently "conceal it."

In re Hirsch, 96 Fed. Rep. 468.

"The omission to include property in the schedule of "assets filed by the bankrupt, when such omission was "due to a mistake either of law or fact, is not an offense "under subdivision b of section 29 of the Bankruptcy "Act, and is not ground for withholding a discharge."

In re Morrow, 96 Fed. Rep. 574.

"Where schedules purport to give a full, true and cor- "rect schedule of the assets and liabilities and a creditor "alleges that they do not do so, the allegations should be "definite and certain, and general averments are not suf- "ficient."

In re Stead, 107 Fed. Rep. 68.

Error 3: In confirming the finding of the said special master that the bankrupt has been guilty of having made a false oath, error was committed. All of these various findings of the master have been evolved out of the stock transaction above referred to, and what has been said in

regard to the concealment of property applies equally to the charge that the bankrupt has been guilty of a false oath. The report shows (page 10) that the bankrupt "did not believe that he had any interest in the stock," and how it is possible that the master could find that he was guilty of a false oath under the circumstances is difficult to understand. In this connection we desire to refer to the facts as set forth in the master's report, that this very question had been determined upon a former hearing before the special master acting as referee, at which time the referee inquired fully into the matter as shown in the master's report (pages 15 and 16), and at that time made the following finding which is set out in the master's report:

"This cause coming on to be heard and the court hav-
"ing heard the evidence, the court finds that there is not
"sufficient evidence to make a summary order upon Mrs.
"Greenwood to turn over the stock to the trustee, and
"without prejudice to the right of the trustee to bring
"any plenary action if it may see fit, it is ordered that the
"rule to show cause may be discharged." [Tr. p. 16.]

If this Honorable Court will read the facts as set forth in the master's report, it will see that the question as to the ownership of this stock was one of law and one which the master first as referee decided in favor of the bankrupt, and subsequently as master reversed himself and found against the bankrupt. [See Tr. pp. 15 and 16.] We contend that this finding was *res adjudicata* of that question in so far as these proceedings are concerned, but whether it was such or not, the bankrupt certainly cannot be convicted of having made a false oath upon

matters the referee himself, after a most thorough investigation into the facts, decided in favor of the bankrupt. If the bankrupt made any honest mistake in his testimony either in law or fact, it is not an offense under the Bankruptcy Act.

In re Morrow, 97 Fed. Rep. 574.

"Any statement made or oath made relating to prop-
"erty must have been intentionally and fraudulently
"made, and not made under a mistake, in order to render
"the oath a false oath."

In re Eaton, 110 Fed. Rep. 731;
Smith v. Keagen, 111 Fed. Rep. 157.

Error 4: Error was committed in confirming the report of the said master that the bankrupt failed to keep books of account. The record discloses the fact that the bankrupt was simply an employee on a salary and had been such ever since the 16th day of March, 1906. [Tr. p. 7.] This was more than three years prior to the adjudication of bankruptcy. [Tr. p. 7.] Being simply an employee he was not required by the law to keep a set of books.

"The bankrupt not having been engaged in any busi-
"ness on his own account necessitating or rendering ap-
"propriate the keeping of books from which his financial
"condition might be ascertained, his omission to keep
"such does not bar his discharge."

Sellers v. Bell, 94 Fed. Rep. 807.

Neither the objections nor the report of the master are sufficient in this particular upon which to base a find-

ing of conviction, or a conclusion that the bankrupt has violated the statute in this particular. The particular allegations in the objections are found at page 27 of the transcript, where it is charged that:

"Said bankrupt has with intent to conceal his financial "condition, failed to keep books of account or records "from which such condition might be ascertained."

The report of the master is:

"That he did not keep any such books of account or any "records, and with the intent to conceal his true financial "condition." [Tr. p. 14.]

The law as it stood at the time these proceedings were instituted was set forth in subdivision 2, section 14, of the Bankruptcy Act, from which we quote:

"With fraudulent intent to conceal his true financial "condition AND IN CONTEMPLATION OF BANKRUPTCY, "destroyed, concealed, or failed to keep, books of account "or records from which his true financial condition might "be ascertained."

The law is plain that the statute in this particular must be followed, and it must appear that such act was done in contemplation of bankruptcy.

"Exceptions to the discharge of the bankrupt on the "ground that he did not keep proper books of account will "not be sustained when it is not shown that there was any "fraudulent intent, and in contemplation of bankruptcy "to conceal his true financial condition."

99 Fed. Rep. 706;
109 Fed. Rep. 307;
96 Fed. Rep. 88;
96 Fed. Rep. 594;

102 Fed. Rep. 114;
96 Fed. Rep. 314;
106 Fed. Rep. 143;
107 Fed. Rep. 77;
108 Fed. Rep. 794;
115 Fed. Rep. 259.

Error 5: Error was committed in denying the application for the discharge of the said bankrupt.

"The fact that the bankrupt was reckless, improvident "and utterly incompetent to conduct his affairs does not "prevent his discharge."

In re Bonner, 22 A. B. R. 151, 169 Fed. 729;
In re Alleman, 20 A. B. R. 745, 162 Fed. 693;
Cohn v. U. S., 19 A. B. R. 8, 168 Fed. 656.

The order of the referee in this proceeding that Mrs. Greenwood was the owner of the stock, even though not conclusive, until set aside is still presumptively the order of the court.

Sec. 1963, sub. 17, California Code of Civil Procedure;
Sec. 1909 California Code of Civil Procedure.

Section 1963, sub. 17, *supra,* provides:

"That a judicial record, when not conclusive does still "correctly determine or set forth the rights of the "parties."

Section 1909 of the Code of Civil Procedure of the state of California declares:

"Other judicial orders of a court or judge of this state

"or of the United States, create a disputable presump-
"tion according to the matter directly determined."

The case of Lamb v. Wahlenmeyer, 144 Cal. 91, 95, holds:

"The question in passing upon a plea of *res adjudicata*
"is not whether the court decided the question involved
"right or wrong, but the question is, did the court decide
"the point?"

In discussing the assignment of errors we have confined ourselves to statutory grounds. The master's report takes occasion to go outside of the statutory grounds of objections as permitted by the Bankruptcy Act. All matters discussed relating to the dealings between the bankrupt and the corporation of which he was president are irrelevant and immaterial, and will not be taken up and discussed for that reason. The law is plain upon this point.

"The specifications of objections must exhibit, and
"the evidence in support of them must prove, one of the
"objections specified in law."

Collier on Bankruptcy, page 188;
In re Frank, 6 A. B. R. 156;
Smith v. Keiger, 17 A. B. R. 4; 6 A. B. R. 703; 6 A. B. R. 73; 5 A. B. R. 703; 107 Fed. 83; 4 A. B. R. 544; 103 Fed. 64; and the many cases cited under the citation of Collier on Bankruptcy, *supra.*

The master in his report sets forth his findings in this matter as referee, in which he found Mrs. Greenwood to be the owner of the stock and recommended that the trustee bring an action, if it saw fit, to test the question

of said ownership. This was never done by the trustee as far as the report shows. The trustee should be confined to the remedy suggested. [Tr. p. 16.]

"The act is very liberal towards the bankrupt as to his "discharge, and strict construction of the terms under "which opposition will be sustained are had in favor of "the bankrupt's discharge."

Sec. 2467 Remington on Bankruptcy.

In re Glass, 9 A. B. R. 393, 119 Fed. 509.

Section 2467 Remington further provides:

"Section 14 (b) provides the judge 'shall grant the "discharge unless certain acts are proved, and the lead- "ing act consists of offenses prohibited as crimes. More- "over, the defenses are so surrounded with qualifications "in favor of the bankrupt as to indicate clearly the inten- "tion of Congress that a strict construction of the act in "favor of the bankrupt so far as it relates to opposition "to discharge, must prevail.' "

In re Baudeyne, 3 A. B. R. 55, 96 Fed. 539.

The objector in the cause before the court is not entitled to very great consideration from the fact that neither he nor his assignor ever filed a claim in the proceedings. The law allows one year in which to file a claim. This law is a statute of limitations. If the party does not appear within the time his right is barred, and if he files objections after that period he should first show that he is a party in interest. This was not done in the case at bar. The claim was not filed until after this whole proceeding was heard, submitted and determined. The statute of limitations having run against the claim, it should now be held stale.

In conclusion, what good can it avail to deny this bankrupt his discharge? He has reasonably complied with all the provisions of the law. He has turned over what property he had. He is but a poor employee without assets. A liberal construction of the law should be made in his favor and give him an opportunity to begin life anew. A denial of this right will simply permit old creditors to harrass him and prevent him from entering successfully into any line of business. The report of the master in this matter is not sufficient to convict him of the wrong contemplated by the statute and thus to deny him the right of a discharge. Unless this is clearly shown, we contend that he is entitled to a discharge and the same should be granted him in the case at bar.

Respectfully submitted.

R. L. Horton,

Attorney for Said Bankrupt and Petitioner.

No. 1997.

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

A. L. Haley,
Petitioner,
vs.
John D. Pope,
Respondent.

In the Matter of
A. L. HALEY,
Bankrupt.

Brief of John D. Pope, Respondent, and Los Angeles Trust & Saving Bank, Trustee in Bankruptcy of the Estate of A. L. Haley, Bankrupt.

A full statement of this case is contained in the report of the Special Master, Honorable Lynn Helm, set forth in the petition for revision beginning on page one thereof.

We wish to call the special attention of the court to the following excerpt from the opinion of the Special Master:

"There is no doubt about the fact that the bankrupt is an architect, and that he took up this scheme of converting his property and the good-will of his business into a corporation known as the 'A. L. Haley, Architect,

Incorporated,' so that it might not be within the reach of his creditors, and that he could enjoy the benefits of it without accounting therefor to anyone whomsoever. It is evident that from the inception of the corporation to the time of the filing of the petition in bankruptcy, the bankrupt was to enjoy the benefit of the corporation and of all its earnings. That he had transferred the property to Mrs. Greenwood as security for a debt, or as her absolute property, when he continued to enjoy all the benefits of it, is such an unusual and improbable story that the mere recital of it is convincing that the property is the property of the bankrupt, and that if Mrs. Greenwood holds it at all, she only holds it as security for some alleged indebtedness due her from the bankrupt."

This case, on the facts found by the Special Master, presents one of the most brazen attempts of an individual to impose upon the bankruptcy court that has ever come under our observation.

The bankrupt, A. L. Haley, is an architect of considerable ability, and at the time of the filing of his petition was able to make a large income from his business. He owed a large amount of money for current obligations, as shown by his schedule. The extent of his income is indicated from the fact that he drew ten thousand dollars ($10,000) from the "A. L. Haley, Architect, Incorporated," in addition to a salary of $250 per month.

The corporation, the "A. L. Haley, Architect, Incorporated," was incorporated by A. L. Haley as a scheme of converting his property and the goodwill of his business into the corporation so that it might not be within the reach of his creditors, and that he could enjoy the benefits of it without accounting to anyone whomsoever. He managed and controlled the corporation, and the other stockholders and directors were mere dummies.

This matter is presented to the Circuit Court of Appeals by a petition for revision, and on such a petition the court of appeals will not review the findings of fact of the lower court. The review is had upon questions of law only. We will not therefore discuss the questions of fact which are raised in the petitioner's brief.

The first objection made to the decision of the lower court by the petitioner is that the assignment of the judgment in favor of Charles E. Fish to John D. Pope was not filed in this action until the 20th day of February, 1911, being the day upon which the transcript was written up. The original assignment was withdrawn on February 21st, and a copy substituted, which was proper. The endorsement on the assignment shows that it had been previously filed in the Superior Court of Los Angeles county, and that was the reason that it was not filed at the time of the hearing. It is immaterial what time the assignment was actually filed in the office of the Special Master, because at the time of the hearing it was agreed that subject to its relevancy, the assignment should be received in evidence.

At the hearing the fact of the existence of the assignment was put in evidence, and its contents stated, but the actual document was not in court, and it was agreed at that time that subject to the relevancy of the document it might be admitted in evidence. There was no question of its contents and no question of its existence. The only question reserved was whether or not the assignment was relevant. The Special Master had all of the information in regard to the assignment

in his possession at all times since the hearing, which was had on the 2nd day of November, 1910.

The Special Master states that it was agreed that the assignment should be received in evidence. [Tr. p. 4.] The Special Master does not say when it was agreed, but the fact is that it was agreed at the time of the hearing that it should be received in evidence, subject to its relevancy, and at that time all of the facts in relation thereto were discussed and no objection was made to the assignment, except that it was irrelevant.

We do not consider it necessary to make any further answer to the objection raised by petitioner, to-wit: "That John D. Pope never at any time filed any claim of any kind or character in said bankruptcy proceedings"; except to refer the court to the authorities set forth in the opinion of the Special Master on pages 4-6 Petition for Revision, and to the case of *In re* Barrager, decided by District Judge Reed, U. S. District Court, Northern District of Ohio, November, 1911, reported in 27 A. B. R., page 366, and cases therein cited. Also reported in

191 Fed. Rep., p. 247.

See also

In re Westbrook, 186 Fed. 414.

II.

On a petition for review the appellate court will not disturb the finding of the Special Master contained on page 11 of the petition, to-wit: "That under these circumstances for the bankrupt not to schedule the property and to continue to insist that the property is not his,

is a concealment of property from his trustee which should bar his discharge."

We do not feel that it is incumbent to further discuss the facts in this brief, inasmuch as the Special Master has set them forth so clearly in his findings, and the decisions referred to by the petitioner in his brief upon this point do not cover the facts contained in this case.

III.

The answer to petitioner's argument that the referee decided the question of the bankrupt having made a false oath two different ways and that the first decision was *res adjudicata* we refer the court to the opinion of the Special Master, pages 15 and 16, which shows that the Special Master, when sitting as the referee, rendered a decision which was on a rule to show cause, and that the referee held that inasmuch as Mrs. Greenwood was an adverse claimant to the stock, that he was powerless to make a summary order upon her to deliver it to the trustee.

The authorities cited by petitioner relating to this point are that a mistaken oath made in good faith will not prevent a discharge, but the Special Master, and the court below has found that this false oath was not made in good faith.

IV.

Petitioner makes two arguments against the findings of the Special Master to the effect that the bankrupt failed to keep books of account. His first argument is that the bankrupt was an employee on a salary. Even

if this were true, an employee on a salary is not allowed any greater latitude in concealing his property than any other person. But the opinion of the Special Master shows that Mr. Haley was not simply an employee on a salary; on the contrary, he was the whole corporation, and the corporation was under his control and guidance at all times and the Special Master finds that A. L. Haley did not keep any books of account himself, and that the A. L. Haley, Architect, Incorporated, company, did not keep any books of account. This question was discussed by the Special Master beginning on page 12 in the Petition for Revision.

The authorities cited by petitioner relating to this point all deal with cases where the bankrupt acted in good faith, and under conditions entirely dissimilar from those set forth by the Special Master.

V.

Petitioner in his brief, on page 16 thereof, under Error 5, repeats his claim that the decision of the referee, refusing to make a summary order upon Mrs. Greenwood to return the stock, was *res adjudicata* of all matters pertaining to the action of Mr. Haley in regard to such stock, and that consequently he should receive his discharge. The decision of the referee on that matter and the findings of the Special Master which were affirmed by the District Court on the opposition to the discharge, are so entirely different that it is not necessary to further discuss this matter. Petitioner cites the case of Lamb v. Wahlenmaier, 144 Cal. 91, which states that "the question in passing upon a plea of *res adjudicata* is not whether the court decided

the question involved right or wrong, but the question is, did the court decide the point?"

The referee did not decide the question of the right of the bankrupt to his discharge when he decided that he could not issue a summary order on Mrs. Greenwood.

The petitioner urges that the bankrupt should be discharged because he is a poor man. The only evidence upon this subject is that he had drawn a salary of two hundred fifty dollars ($250) a month as an employee of the "A. L. Haley, Architect, Incorporated," company, and in addition to that he had overdrawn his account and taken from the company, under the resolution authorizing him to do its business, the sum of upwards of ten thousand dollars ($10,000), and that he was indebted to the company in that amount, and that none of the stockholders had called upon him for an accounting, or asked him for money to apply upon dividends. He testified that his reason for drawing money in preference to the other people drawing it, was due to the fact that he owned all the stock, and that it was equivalent to declaring a dividend, but instead of declaring a dividend, he simply got the money from the secretary of the company whenever he wanted it. (Petition for Revision, pages 8 and 9.)

It is respectfully submitted that the decision of the Special Master and of the District Court should be affirmed.

Respectfully submitted,

SHANKLAND & CHANDLER,

Attorneys for Respondent John D. Pope, and for Los Angeles Trust & Savings Bank, Trustee in Bankruptcy of the Estate of A. L. Haley, Bankrupt.